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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 746

EDWARD D. MARKHAM,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS, EX REL. EARLE G. H. CROMER, ET AL.,

Respondents.

PETITION FOR REHEARING.

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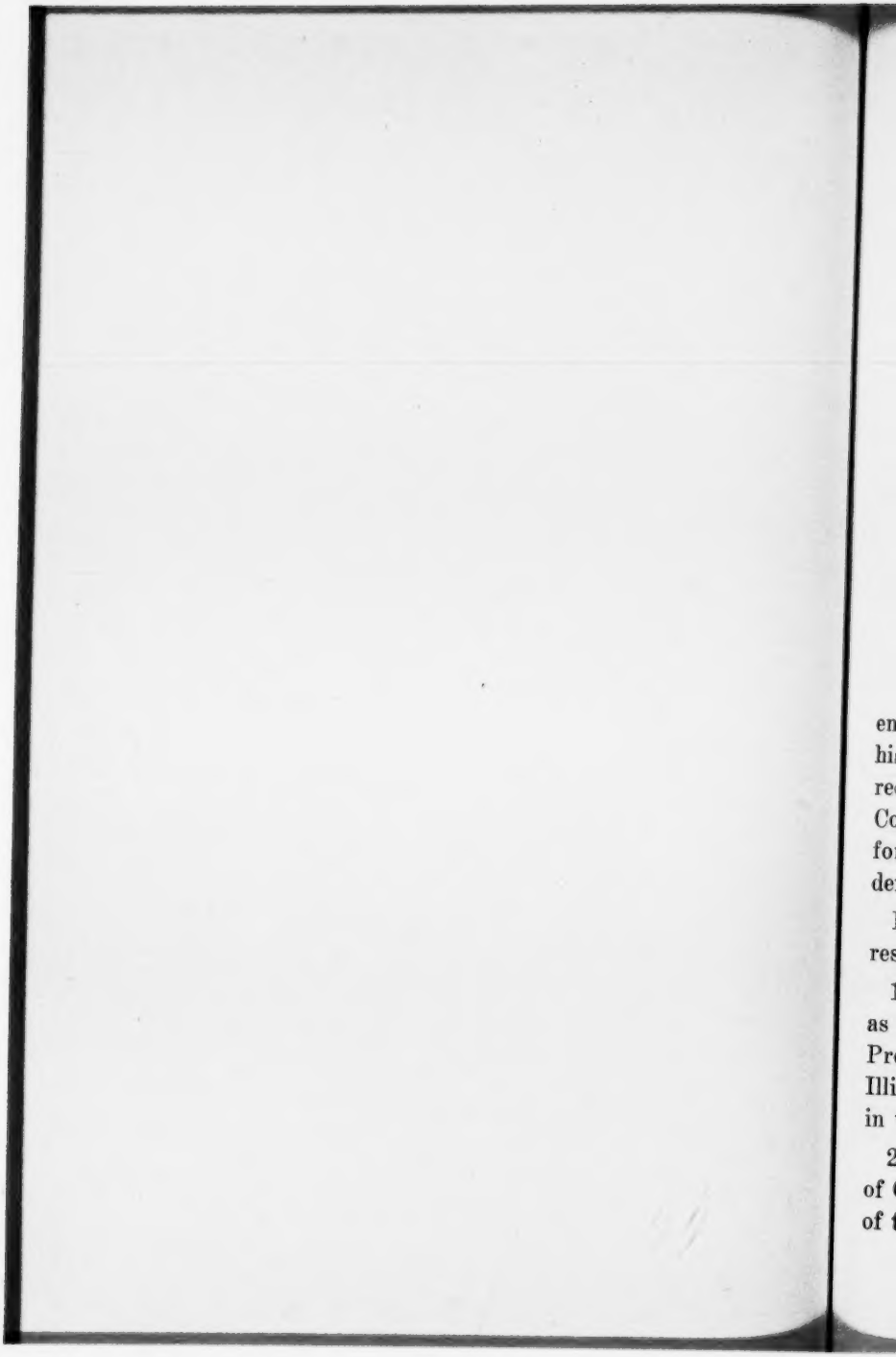

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Comes now Edward D. Markham, petitioner in the above entitled cause, by Henry I. Green and Charles J. Monahan, his attorneys, and respectfully prays a rehearing and a reconsideration of the ruling entered by this Honorable Court on April 5, 1943, whrein the prayer of this petitioner for writ of certiorari in the above entitled cause was denied.

In support of this petition for rehearing, your petitioner respectfully shows:

1. The Court overlooked the fact that there was filed as a part of the record in this cause, a certificate from the Presiding Justice of the Supreme Court of the State of Illinois that a federal question was presented and involved in this cause.

2. Appearing at page 1 of the record is the certificate of Clyde E. Stone, Presiding Justice of the Supreme Court of the State of Illinois, wherein is set forth the nature and

character of the federal question presented and involved. A copy of that certificate appears at pages 6 and 7 of the petition for certiorari.

3. The decision of the Supreme Court of Illinois is in direct conflict with the decisions of courts of last resort in a number of other states upon the same question and proposition, viz.: Whether or not the acceptance of a commission in the armed forces of the United States, operates *ipso facto* to create a vacancy in any public office held under authority of any state.

4. If there is no review and decision of this question by the Supreme Court of the United States, there will exist and remain directly conflicting rules in the several states upon the same federal question.

5. On page 18 of the petition for writ of certiorari, we cited, and now again call attention to the decisions of courts of last resort in the states of Missouri, California, Louisiana, Texas and Florida, which are in direct conflict with the decision of the Illinois Supreme Court in this case.

6. The question here involved is of tremendous public importance.

In the states named, other than Illinois, wherein the question was presented, the constitution of the state contained the same constitutional provision as exists in Illinois with respect to incompatible officers held under authority of the state and of the federal government. In all of the state court decisions above referred to, the question for consideration was raised on the following provision of the state constitution:

> "Nor shall any person holding any office of honor or profit under any foreign government or under the government of the United States hold any office of honor or profit under the authority of this State."

In each and all of the decisions of the state courts above

referred to, the same provision was contained in the constitution of the state where the question arose.

In all of said states other than Illinois, the court of last resort held that the holding of a commission in the armed forces of the United States was not "holding any office of honor or profit * * * under the government of the United States."

7. The court has, we believe, overlooked the fact that if the provision of a state constitution is intended or construed to be controlling with respect to the consequences of accepting a commission in the armed forces, then it violates the provisions of Article I, Section 8, of the Federal Constitution as pointed out on page 12 *et seq.* of our petition for certiorari.

8. This court must have overlooked the fact that by acts of Congress and acts of the state legislature of the State of Illinois, there has been adopted a common public policy to the effect that a citizen will not be penalized because he is a patriot.

We, therefore, respectfully pray that reconsideration be given to the petition for certiorari filed in this cause; that upon reconsideration, said petition be granted; and that after opportunity for filing of briefs and presenting arguments by counsel for petitioner, this Court will be persuaded to accept the reasoning of the courts of last resort of the states of Missouri, California, Louisiana, Texas and Florida as against the reasoning of the Supreme Court of Illinois in this case; and that the decision in this case by the Supreme Court of Illinois be reversed.

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